



15 JUN 2007

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In re Application of	:	
KELLER et al.	:	DECISION
Application No.: 10/575,019	:	
PCT No.: PCT/EP2004/011062	:	
Int. Filing Date: 04 October 2004	:	
Priority Date: 06 October 2003	:	
Attorney's Docket No.: 2584SG-5	:	
For: FIRE PROTECTION GATE AND	:	
CORRELATED FIRE PROTECTION INSET	:	

This decision is in response to applicants' "RENEWED PETITION UNDER 37 CFR 1.10(d)" filed on 19 March 2007 and applicants' "SUPPLEMENTAL PETITION TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION PURSUANT TO 37 CFR 1.137(b)" filed 13 June 2007.

BACKGROUND

On 04 October 2004, applicants filed international application PCT/EP2004/011062, which designated the U.S. and claimed a priority date of 06 October 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 21 April 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 06 April 2006.

On 07 April 2006, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and an English translation of the international application.

On 08 June 2006, applicants filed a "REQUEST FOR CORRECTION OF NATIONAL PHASE FILING DATE", which was treated as a petition under 37 CFR 1.10(d).

On 25 August 2006, a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) was mailed indicating that the application was abandoned as to the United States of America for failure to pay the U.C. Basic National Fee within thirty months from the earliest priority date.

On 19 September 2006, a decision was mailed dismissing applicants' petition under 37 CFR 1.10(d) without prejudice. Specifically, it was noted that applicants had not made a

satisfactory showing under 37 CFR 1.10(d)(3).

On 20 November 2006, applicants submitted a "RENEWED PETITION UNDER 37 CFR 1.10(d)".

On 22 January 2007, a decision was mailed dismissing applicants' petition under 37 CFR 1.10(d) without prejudice. Specifically, it was again noted that applicants had not made a satisfactory showing under 37 CFR 1.10(d)(3).

On 19 March 2007, applicants submitted a "RENEWED PETITION UNDER 37 CFR 1.10(d)".

On 13 June 2007, applicants submitted a "SUPPLEMENTAL PETITION TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION PURSUANT TO 37 CFR 1.137(b)."

DISCUSSION

Petition Under 37 CFR 1.10(d)

A review of the application papers located in the application file reveals that they were stamped with a receipt date of 07 April 2006. The "Express Mail" label number EV788583237US is shown on the transmittal letter which itemizes the items being filed. The copy of the Customer Copy of the "Express Mail Post Office to Addressee" mailing label accompanying the petition contains the same "Express Mail" label number.

The copy of the Finance Copy of Express Mail mailing label #EV788583237US shows a "Date In" of "4706".

37 CFR 1.10(d) states:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

As noted in the decision mailed 19 September 2006, a satisfactory showing under 37 CFR 1.10(d)(1) and (2) has been provided.

As to item (3), a satisfactory showing has still not been provided. The supplemental declarations of Susan Wilson, Eddie Abeyta, and Carol Werner filed 19 March 2007 have been considered. The supplemental declaration of Susan Wilson states that it is the custom and practice to confirm filing of the documents "by communicating with the staff members responsible for depositing accountable mail with the USPS" and that she communicated with Ms. Carol Werner on 07 April 2006. The supplemental declaration of Carol Werner states that she sent an e-mail to the foreign associate Grosse Bockhorni & Schumacker (GBS) confirming that the four applications were completed and filed via Express Mail at 5:23 *p.m. on 06 April 2006*. She then communicated this information to Susan Wilson on 07 April 2006. The third supplemental declaration of Eddie Abeyta states that he deposited the documents on 06 April 2006 on or about 6:20 *p.m.* Thus, it appears that Ms. Werner's confirmation of delivery occurred *before* actual delivery. As Susan Wilson's confirmation appears to be based on Ms. Werner's confirmation, it would also be faulty.

Regarding the third supplemental declaration of Eddie Abeyta, the decision mailed 06 December 2006 indicated that Mr. Abeyta's declaration of 06 June 2006 states that "I requested copies of the Express Mail receipts from the Post Office for all items sent on April 6 and 7, 2006". However, the declaration does not indicate how the request was made. For example, were receipts for particular Express Mail mailing label numbers requested? If so, how were these numbers obtained? Or did the request, for example, ask for all receipts from a particular sender having a date-in of April 6, 2006 or April 7, 2006? Clarification was required. However, the third supplemental declaration of Mr. Abeyta does not provide any clarification.

Petition Under 37 CFR 1.137(b)

The petition filed 13 June 2007 requests that the petition under 37 CFR 1.137(b) be considered in the alternative to the petition under 37 CFR 1.10(d). Since the petition under 37 CFR 1.10(d) is dismissed for the reasons set forth above, the petition under 37 CFR 1.137(b) is now considered.

A petition to revive the present application under 37 CFR 1.137(b) must include:

- (1) The required reply;
- (2) The petition fee;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

As to item (1), applicant submitted the basic national fee on 07 April 2006.

As to item (2), applicant submitted the petition fee on 08 June 2006. (An additional \$750

has been charged to Deposit Account 19-1970. Applicant paid the petition fee for a small entity. However, an assertion of small entity status does not appear in the application file. See 37 CFR 1.27(c).)

As to item (3), petitioner's statement that the "entire delay in entering the U.S. national phase was unintentional" has been construed as meaning that the "entire delay in filing the required reply (The required reply being the U.S. Basic National Fee.) from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional." If this interpretation is incorrect, applicant must *immediately* notify the Office of PCT Legal Administration of such fact.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

CONCLUSION

For the reasons set forth above, applicant's petition under 37 CFR 1.10(d) is **DISMISSED** without prejudice.

For the reasons set forth above, applicant's petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application including preparing and mailing a NOTIFICATION OF MISSING REQUIREMENTS (Form PCT/DO/EO/905) requiring an executed oath or declaration of the inventor in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(h) for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage.



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